



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

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900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

The Honorable Stephen D. Newman
Member, Senate of Virginia
Post Office Box 480
Forest, Virginia 24551

Dear Senator Newman:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You present several questions related to the possession and storage of firearms in vehicles by persons who may lawfully possess a firearm but have not been issued a concealed weapons permit. You first ask whether a handgun can be loaded inside a vehicle and under what conditions. Your second inquiry concerns whether a handgun can be within the reach of a driver or a passenger inside a vehicle. You next ask whether a center console, glove compartment or any other "container or compartment must be locked to constitute a "secured container or compartment." Finally, you ask whether an individual can keep a firearm in their vehicle at their place of employment even if there is a company policy or signage stating it is not allowed.

Response¹

It is my opinion that, provided the handgun is properly secured in a container or compartment within the vehicle, persons who may lawfully possess a firearm but have not been issued a concealed weapons permit may possess, in a vehicle, a handgun that is loaded and the handgun may remain within reach of a driver or passenger under such conditions. It further is my opinion that, for a handgun to be "secured in a container or compartment," such storage tool need not be locked. Finally, it is my opinion that an individual may not keep a firearm stored in his vehicle at a place of employment if there is a company policy or signage prohibiting firearms on the premises.

Applicable Law and Discussion

Section 18.2-308(A) of the *Code of Virginia* prohibits the carrying of a concealed weapon without a permit. Prior to 2010, unless a limited exception applied, this restriction precluded the transportation of a handgun in a concealed manner in a vehicle, including instances where the firearm was stored in a glove

¹ My response is limited to the application of Virginia law. Federal law may have different requirements governing the transportation of firearms in motor vehicles across state lines. See 18 U.S.C. § 926A.

compartment or center console.² In 2010, the General Assembly amended § 18.2-308 to add § 18.2-308(B)(10),³ which carves out a further exception for “any person who may lawfully possess a firearm and is carrying a handgun while in a personal, private motor vehicle or vessel and such handgun is secured in a container or compartment in the vehicle or vessel.” You inquire regarding the application of this exception.

Several principles of statutory construction apply to the questions you pose. First, statutes are to be construed according to their plain language.⁴ Further, statutes are not to be read in isolation;⁵ rather, sections related to the same subject matter are to be read *in para materia*.⁶ Also, where a statute specifies certain things, the intention to exclude that which is not specified may be inferred,⁷ and “[courts] may not add to a statute language which the legislature has chosen not to include.”⁸ Finally, criminal statutes are to be strictly construed.⁹

You first ask whether the handgun must be unloaded for the exception of § 18.2-308(B)(10) to apply. The other provisions of § 18.2-308 pertaining to the transportation of firearms in a motor vehicle set forth additional limited exceptions “provided that the weapons are unloaded and securely wrapped while being transported.”¹⁰ Section 18.2-308(B)(10) does not include similar language. Had the General Assembly intended to condition the application of § 18.2-308(B)(10) by requiring the transported handgun to be unloaded, it clearly knew how to do so.¹¹ I therefore conclude that, provided that the handgun is stored in a manner as prescribed in § 18.2-308(B)(10), a handgun can be kept loaded inside a vehicle when possessed by someone who may lawfully possess a firearm but has not been issued a concealed weapons permit.

You next ask whether a handgun that is being transported in a motor vehicle may be within reach of the driver or a passenger. Section 18.2-308(A) makes it a Class 1 misdemeanor for any person without a permit to carry a firearm “about his person, hidden from common observation.” Under the statute, “about his person” contemplates “the accessibility of a concealed weapon for prompt and immediate use”¹² and therefore such weapon may not be within reach. Nonetheless, § 18.2-308(B)(10) provides an exception to

²See *Pruitt v. Commonwealth*, 274 Va. 382, 388, 650 S.E.2d 684, 686-87 (2007); *Leith v. Commonwealth*, 17 Va. App. 620, 420 S.E.2d 152 (1994); *Watson v. Commonwealth*, 17 Va. App. 124, 435 S.E.2d 428 (1993); 1993 Op. Va. Att’y Gen. 113.

³2010 Va. Acts ch. 841.

⁴*Signal Corp. v. Keane Fed. Sys.*, 265 Va. 38, 46-47, 574 S.E.2d 253, 257 (2003).

⁵See *Prillaman v. Commonwealth*, 199 Va. 401, 405-06, 100 S.E.2d 4, 7 (1957).

⁶*Id.*

⁷See 2A NORMAN J. SINGER & J.D. SHAMBLE SINGER, *SUTHERLAND STATUTORY CONSTRUCTION* § 47:23 (7th ed. 2007) (explaining maxim of statutory construction “*expressio unius est exclusio alterius*”). See also, e.g., 2008 Op. Va. Att’y Gen. 126, 127 and citations therein.

⁸*County of Amherst v. Brockman*, 224 Va. 39, 397 297 S.E.2d 805, 808 (1982).

⁹*Robinson v. Commonwealth*, 274 Va. 45, 51, 645 S.E.2d 470, 473 (“When construing penal statutes, a court must not add to the words of the statute, nor ignore its actual words, and must strictly construe the statute and limit its application to cases falling clearly within its scope.”) (citations omitted).

¹⁰VA. CODE ANN. § 18.2-308(B)(3) to 18.2-308(B)(5) (Supp. 2011). See § 18.2-308.1(C)(vi).

¹¹See 2007 Op. Va. Att’y Gen. 69, 71 and n.14 (noting and explaining that “when the General Assembly includes specific language in one section of an Act but omits language from another section, courts presume that the omission was intentional.”)

¹²*Pruitt*, 274 Va. at 388, 650 S.E.2d at 687; see *Watson*, 17 Va. App. at 124, 435 S.E.2d at 428 (both decided prior to the enactment of § 18.2-308(B)(10)).

the prohibition when carrying a handgun in a vehicle. That exception applies when the handgun is “secured in a container or compartment in the vehicle[.]” There is no further condition placed on the exception. Thus, provided the handgun is stored accordingly, it can be within the reach of a driver or a passenger inside the vehicle.

You also ask whether a center console, glove compartment or any other “container or compartment” must be locked to constitute a “secured container or compartment.” The legislative history of the 2010 amendment shows that the container or compartment storing the handgun need not be locked for the exception to apply. When § 18.2-308 was amended to include § 18.2-308(B)(10), “locked in a container or compartment” was considered as possible statutory language;¹³ however, “secured in a container or compartment” was the wording that was ultimately adopted.¹⁴ By choosing “secured” instead of “locked,” the General Assembly evinced its intention that a handgun may be carried in a vehicle without requiring the container or compartment storing it to be locked.¹⁵

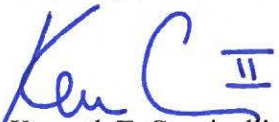
With respect to your final inquiry, an employer can ban firearms on its property if it so chooses. The Constitution of Virginia protects the right to bear arms, but it also recognizes the importance of property rights.¹⁶ Moreover, the Second Amendment acts as a restraint on government, not private parties. Employers can, like any other owner of private property, restrict or ban the carrying of weapons onto their property.¹⁷

Conclusion

Accordingly, it is my opinion that, provided the handgun is properly secured in a container or compartment within the vehicle, persons who may lawfully possess a firearm but have not been issued a concealed weapons permit may possess, in a vehicle, a handgun that is loaded and the handgun may remain within reach of a driver or passenger under such conditions. It further is my opinion that, for a handgun to be “secured in a container or compartment,” such storage tool need not be locked. Finally, it is my opinion that an individual may not keep a firearm stored in his vehicle at a place of employment if there is a company policy or signage prohibiting firearms on the premises.

With kindest regards, I am

Very truly yours,


Kenneth T. Cuccinelli, II
Attorney General

¹³ Visit <http://leg1.state.va.us/cgi-bin/legp504.exe?101+sum+HB885> to view the legislation as introduced and with its suggested amendments.

¹⁴ Compare 2010 Va. Acts ch. 740 with 2010 Va. Acts ch. 841.

¹⁵ The legislature is presumed to have chosen with care the words it used when it enacted a statute. *Barr v. Town & Country Props., Inc.* 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990).

¹⁶ VA. CONST. art., § I (recognizing the right of “acquiring and possessing property” as one of the inherent rights of mankind).

¹⁷ 2011 Op. Va. Att’y Gen. 104. See also § 18.2-308(O).